

***IN THE DISTRICT COURT OF THE UNITED STATES
for the Western District of New York***

**OCTOBER 2018 GRAND JURY
(Impaneled October 24, 2018)**

THE UNITED STATES OF AMERICA

-vs-

**THIRD
SUPERSEDING
INDICTMENT**

**CARLOS JAVIER FIGUEROA a/k/a Javi
a/k/a Big Bro**

(Counts 1-5, 9, 10, 15-21),

**JONATHAN CRUZ-CARMONA a/k/a
Tapon a/k/a Eneno**

(Counts 1, 2, 9, 10, 14),

XAVIER TORRES a/k/a Pistolita

(Counts 1, 2, 11-13, 15-17),

OBED TORRES GARCIA,

(Counts 1, 2, 6-8, 20, 21),

JEAN KARLOS PIZARRO a/k/a Yankee

(Counts 1, 4), and

VICTOR NUNEZ

(Counts 1, 2)

18-CR-6094-FPG

Violations:

Title 21, United States Code,
Sections 841(a)(1), 846 and 856(a)(1);
Title 18, United States Code,
Sections 111(a), 111(b), 924(c)(1)(A),
924(j)(1), 1114(3), and 2

(20 Counts and Forfeiture Allegation)

COUNT 1

(Narcotics Conspiracy)

The Grand Jury Charges That:

Beginning in or about 2015, the exact date being unknown to the Grand Jury, and through on or about January 29, 2018, in the Western District of New York, and elsewhere, the defendants, **CARLOS JAVIER FIGUEROA a/k/a Javi a/k/a Big Bro, JONATHAN CRUZ-CARMONA a/k/a Tapon a/k/a Eneno, XAVIER TORRES a/k/a Pistolita, OBED TORRES GARCIA, JEAN KARLOS PIZARRO a/k/a Yankee, and VICTOR**

NUNEZ, did knowingly, willfully, and unlawfully combine, conspire, and agree together and with others, known and unknown to the Grand Jury, to commit the following offenses, that is, to possess with intent to distribute, and to distribute, 5 kilograms or more of a mixture and substance containing cocaine, a Schedule II controlled substance, and 1 kilogram or more of a mixture and substance containing heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A).

All in violation of Title 21, United States Code, Section 846.

COUNT 2

**(Possessing, Brandishing, and Discharging Firearms
in Furtherance of a Drug Trafficking Crime)**

The Grand Jury Further Charges That:

Beginning in or about 2015, the exact date being unknown to the Grand Jury, and through on or about January 29, 2018, in the Western District of New York, the defendants, **CARLOS JAVIER FIGUEROA a/k/a Javi a/k/a Big Bro, JONATHAN CRUZ-CARMONA a/k/a Tapon a/k/a Eneno, XAVIER TORRES a/k/a Pistolita, OBED TORRES GARCIA**, and **VICTOR NUNEZ**, during and in relation to a drug trafficking crime for which they may be prosecuted in a court of the United States, that is, a violation of Title 21, United States Code, Section 846, committed in the manner set forth in Count 1 of this Third Superseding Indictment, the allegations of which are incorporated herein by reference, did knowingly and unlawfully use, carry, brandish, and discharge, and in furtherance of such crime, did knowingly and unlawfully possess, brandish, and discharge, firearms.

All in violation of Title 18, United States Code, Sections 924(c)(1)(A)(i), 924(c)(1)(A)(ii), 924(c)(1)(A)(iii), and 2.

COUNT 3

(Possession of Cocaine With Intent to Distribute)

The Grand Jury Further Charges That:

On or about January 29, 2018, in the Western District of New York, the defendant, **CARLOS JAVIER FIGUEROA a/k/a Javi a/k/a Big Bro**, did knowingly, intentionally, and unlawfully possess with intent to distribute 500 grams or more of a mixture and substance containing cocaine, a Schedule II controlled substance.

All in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(B).

COUNT 4

(Maintaining a Drug-Involved Premises)

The Grand Jury Further Charges That:

Between in or about September 2017, the exact date being unknown to the Grand Jury, and on or about January 29, 2018, in the Western District of New York, the defendant, **CARLOS JAVIER FIGUEROA a/k/a Javi a/k/a Big Bro**, and **JEAN KARLOS PIZARRO a/k/a Yankee**, did knowingly, intentionally, and unlawfully use and maintain a place, that is, the premises at 292 Barrington Street, Rochester, New York, for the purpose of manufacturing, distributing, and using cocaine, a Schedule II controlled substance, and heroin, a Schedule I controlled substance.

All in violation of Title 21, United States Code, Section 856(a)(1) and Title 18, United States Code, Section 2.

COUNT 5

(Possession of Firearms in Furtherance of Drug Trafficking Crimes)

The Grand Jury Further Charges That:

On or about January 29, 2018, in the Western District of New York, the defendant, **CARLOS JAVIER FIGUEROA a/k/a Javi a/k/a Big Bro**, in furtherance of drug trafficking crimes for which he may be prosecuted in a court of the United States, that is, violations of Title 21, United States Code, Sections 841(a)(1) and 856(a)(1), committed in the manner set forth in Counts 3 and 4 of this Third Superseding Indictment, the allegations of which are incorporated herein by reference, did knowingly and unlawfully possess firearms.

All in violation of Title 18, United States Code, Sections 924(c)(1)(A)(i) and 2.

COUNT 6

(Attempt to Kill Officers and Employees of the United States)

The Grand Jury Further Charges That:

On or about January 29, 2018, in the Western District of New York, the defendant, **OBED TORRES GARCIA**, with premeditation and malice aforethought, did unlawfully attempt to kill and murder:

(a) officers and employees of the United States and of an agency of the executive branch of the United States Government, namely, two agents of the United States Customs and Border Protection, and an agent of the United States Immigration and Customs Enforcement, while such officers and employees were engaged in and on account of the performance of official duties; and

(b) persons assisting such officers and employees in the performance of such duties and on account of that assistance.

All in violation of Title 18, United States Code, Sections 1114(3) and 1113.

COUNT 7

(Assaulting Officers and Employees of the United States with a Deadly Weapon)

The Grand Jury Further Charges That:

On or about January 29, 2018, in the Western District of New York, the defendant, **OBED TORRES GARCIA**, did knowingly forcibly assault, resist, oppose, impede, intimidate, and interfere with:

(a) officers and employees of the United States and of an agency of the executive branch of the United States Government, namely, two agents of the United States Customs and Border Protection, and an agent of the United States Immigration and Customs Enforcement, while such officers and employees were engaged in and on account of the performance of official duties; and

(b) persons assisting such officers and employees in the performance of such duties and on account of that assistance,

and in the commission of such acts, did use a deadly and dangerous weapon, that is, a firearm.

All in violation of Title 18, United States Code, Sections 111(a)(1) and 111(b).

COUNT 8

(Possession and Discharge of Firearm in Furtherance of Crimes of Violence)

The Grand Jury Further Charges That:

On or about January 29, 2018, in the Western District of New York, the defendant, **OBED TORRES GARCIA**, during and in relation to crimes of violence for which he may be prosecuted in a court of the United States, that is, violations of Title 18, United States Code, Sections 111(a), 111(b), and 1114(3), committed in the manner set forth in Counts 6 and 7 of this Third Superseding Indictment, the allegations of which are incorporated herein by reference, did knowingly and unlawfully use, carry, and discharge, and in furtherance of such crimes, did knowingly and unlawfully possess and discharge, a firearm.

All in violation of Title 18, United States Code, Section 924(c)(1)(A)(iii).

COUNT 9

(Murder With a Firearm in Furtherance of Drug Trafficking Crime)

The Grand Jury Further Charges That:

On or about September 12, 2016, in the Western District of New York, the defendants, **CARLOS JAVIER FIGUEROA a/k/a Javi a/k/a Big Bro**, and **JONATHAN CRUZ-CARMONA a/k/a Tapon a/k/a Eneno**, during and in relation to a drug trafficking crime for which they may be prosecuted in a court of the United States, that is, a violation of Title 21, United States Code, Section 846, committed in the manner set forth in Count 1 of this Third Superseding Indictment, the allegations of which are incorporated herein by reference, did knowingly and unlawfully use, carry, and discharge, and in furtherance of such crime, did knowingly and unlawfully possess and discharge, a firearm, in violation of Title 18, United States Code, Section 924(c)(1)(A)(iii), and, in the course of this violation, the defendants,

JONATHAN CRUZ-CARMONA a/k/a Tapon a/k/a Eneno, and CARLOS JAVIER FIGUEROA a/k/a Javi a/k/a Big Bro, caused the death of Walter Ross through the use of such firearm, which killing was murder as defined in Title 18, United States Code, Section 1111, in that the defendants, with malice aforethought, did willfully, deliberately, maliciously, and with premeditation kill Walter Ross by shooting him with a firearm.

All in violation of Title 18, United States Code, Sections 924(c)(1)(A)(iii), 924(j)(1), and 2.

COUNT 10

(Discharge of a Firearm in Furtherance of Drug Trafficking Crime)

The Grand Jury Further Charges That:

On or about September 12, 2016, in the Western District of New York, the defendants, **CARLOS JAVIER FIGUEROA a/k/a Javi a/k/a Big Bro, and JONATHAN CRUZ-CARMONA a/k/a Tapon a/k/a Eneno**, during and in relation to a drug trafficking crime for which they may be prosecuted in a court of the United States, that is, a violation of Title 21, United States Code, Section 846, committed in the manner set forth in Count 1 of this Third Superseding Indictment, the allegations of which are incorporated herein by reference, did knowingly and unlawfully use, carry, and discharge, and in furtherance of such crime, did knowingly and unlawfully possess and discharge, a firearm.

All in violation of Title 18, United States Code, Sections 924(c)(1)(A)(iii) and 2.

COUNT 11

(Distribution of Cocaine)

The Grand Jury Further Charges That:

On or about July 12, 2015, in the Western District of New York, the defendant, **XAVIER TORRES a/k/a Pistolita**, did knowingly, intentionally, and unlawfully possess with intent to distribute, and distribute, cocaine, a Schedule II controlled substance.

All in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

COUNT 12

(Distribution of Heroin)

The Grand Jury Further Charges That:

On or about July 12, 2015, in the Western District of New York, the defendant, **XAVIER TORRES a/k/a Pistolita**, did knowingly, intentionally, and unlawfully possess with intent to distribute, and distribute, heroin, a Schedule I controlled substance.

All in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

COUNT 13

(Distribution of Heroin)

The Grand Jury Further Charges That:

On or about July 21, 2015, in the Western District of New York, the defendant, **XAVIER TORRES a/k/a Pistolita**, did knowingly, intentionally, and unlawfully possess with intent to distribute, and distribute, heroin, a Schedule I controlled substance.

All in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

COUNT 14

(Distribution of Fentanyl)

The Grand Jury Further Charges That:

On or about January 26, 2018, in the Western District of New York, and elsewhere, the defendant, **JONATHAN CRUZ-CARMONA a/k/a Tapon a/k/a Eneno**, did knowingly, intentionally, and unlawfully possess with intent to distribute, and distribute, N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide (fentanyl), a Schedule II controlled substance.

All in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

COUNT 15

(Possession of Heroin With Intent to Distribute)

The Grand Jury Further Charges That:

On or about August 12, 2015, in the Western District of New York, the defendants, **CARLOS JAVIER FIGUEROA a/k/a Javi a/k/a Big Bro**, and **XAVIER TORRES a/k/a Pistolita**, did knowingly, intentionally, and unlawfully possess with intent to distribute heroin, a Schedule I controlled substance.

All in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C), and Title 18, United States Code, Section 2.

COUNT 16

(Possession of Cocaine With Intent to Distribute)

The Grand Jury Further Charges That:

On or about August 12, 2015, in the Western District of New York, the defendants, **CARLOS JAVIER FIGUEROA a/k/a Javi a/k/a Big Bro**, and **XAVIER TORRES a/k/a**

Pistolita, did knowingly, intentionally, and unlawfully possess with intent to distribute cocaine, a Schedule II controlled substance.

All in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C), and Title 18, United States Code, Section 2.

COUNT 17

(Maintaining a Drug-Involved Premises)

The Grand Jury Further Charges That:

Between in or about 2015, the exact date being unknown to the Grand Jury, and on or about August 12, 2015, in the Western District of New York, the defendants, **CARLOS JAVIER FIGUEROA a/k/a Javi a/k/a Big Bro**, and **XAVIER TORRES a/k/a Pistolita**, did knowingly, intentionally, and unlawfully use and maintain a place, that is, the premises at 11 Burbank Street, Rochester, New York, for the purpose of manufacturing, distributing, and using cocaine, a Schedule II controlled substance, and heroin, a Schedule I controlled substance.

All in violation of Title 21, United States Code, Section 856(a)(1) and Title 18, United States Code, Section 2.

COUNT 18

(Possession of Heroin With Intent to Distribute)

The Grand Jury Further Charges That:

On or about July 30, 2015, in the Western District of New York, the defendant, **CARLOS JAVIER FIGUEROA a/k/a Javi a/k/a Big Bro**, did knowingly, intentionally, and unlawfully possess with intent to distribute heroin, a Schedule I controlled substance.

**All in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C),
and Title 18, United States Code, Section 2.**

COUNT 19

(Maintaining a Drug-Involved Premises)

The Grand Jury Further Charges That:

Between in or about 2015, the exact date being unknown to the Grand Jury, and on or about July 30, 2015, in the Western District of New York, the defendant, **CARLOS JAVIER FIGUEROA a/k/a Javi a/k/a Big Bro**, did knowingly, intentionally, and unlawfully use and maintain a place, that is, the premises at 6 Burbank Street, Rochester, New York, for the purpose of manufacturing, distributing, and using cocaine, a Schedule II controlled substance, and heroin, a Schedule I controlled substance.

**All in violation of Title 21, United States Code, Section 856(a)(1) and Title 18,
United States Code, Section 2.**

COUNT 20

(Possession of Heroin With Intent to Distribute)

The Grand Jury Further Charges That:

On or about January 29, 2018, in the Western District of New York, the defendants, **CARLOS JAVIER FIGUEROA a/k/a Javi a/k/a Big Bro**, and **OBED TORRES GARCIA**, did knowingly, intentionally, and unlawfully possess with intent to distribute heroin, a Schedule I controlled substance.

**All in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C),
and Title 18, United States Code, Section 2.**

COUNT 21

(Maintaining a Drug-Involved Premises)

The Grand Jury Further Charges That:

Between in or about December 2017, the exact date being unknown to the Grand Jury, and on or about January 29, 2018, in the Western District of New York, the defendants, **CARLOS JAVIER FIGUEROA a/k/a Javi a/k/a Big Bro**, and **OBED TORRES GARCIA**, did knowingly, intentionally, and unlawfully use and maintain a place, that is, the premises at 820 East Main Street, apartment number 14, Rochester, New York, for the purpose of manufacturing, distributing, and using cocaine, a Schedule II controlled substance, and heroin, a Schedule I controlled substance.

All in violation of Title 21, United States Code, Section 856(a)(1) and Title 18, United States Code, Section 2.

ALLEGATION OF PRIOR CONVICTION FOR SERIOUS DRUG FELONY

The Grand Jury Alleges That:

Before the defendant, **CARLOS JAVIER FIGUEROA a/k/a Javi a/k/a Big Bro**, committed the offenses charged in Counts 1 and 3 of this Third Superseding Indictment, the defendant had a final conviction for a serious drug felony, that is, a violation of Title 21, United States Code, Section 846, for which the defendant served more than 12 months of imprisonment and for which the defendant was released from serving any term of imprisonment related to the offense within 15 years of the commencement of the instant offenses.

ALLEGATION OF PRIOR CONVICTION FOR SERIOUS DRUG FELONY

The Grand Jury Further Alleges That:

Before the defendant, **XAVIER TORRES a/k/a Pistolita**, committed the offense charged in Count 1 of this Third Superseding Indictment, the defendant had a final conviction for a serious drug felony, that is, a violation of Title 21, United States Code, Section 846, for which the defendant served more than 12 months of imprisonment and for which the defendant was released from serving any term of imprisonment related to the offense within 15 years of the commencement of the instant offense.

FORFEITURE ALLEGATION

The Grand Jury Further Alleges That:

Upon their conviction on any count of this Third Superseding Indictment, the defendants, **CARLOS JAVIER FIGUEROA a/k/a Javi a/k/a Big Bro, JONATHAN CRUZ-CARMONA a/k/a Tapon a/k/a Eneno, XAVIER TORRES a/k/a Pistolita, JEAN KARLOS PIZARRO a/k/a Yankee, OBED TORRES GARCIA, and VICTOR NUNEZ**, shall forfeit their right, title, and interest to the United States of any firearms and ammunition involved or used in the commission of the offense, or found in the possession or under their immediate control at the time of arrest, including, but not limited to:

- a. one (1) Ruger pistol, bearing serial number 332-13800.

All pursuant to Title 18, United States Code, Sections 924(d) and 3665, and Title 28, United States Code, Section 2461(c).

DATED: Rochester, New York, September 26, 2019.

JAMES P. KENNEDY, JR.
United States Attorney

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A TRUE BILL:

s/FOREPERSON
FOREPERSON